

(b) Prior to May 27, 2018 (2 years after the publication date of this rule), FHWA/FTA may approve a STIP update or amendment that has been developed using the SAFETEA-LU requirements or the provisions and requirements of this part. On or after May 27, 2018, FHWA/FTA may only approve a STIP update or amendment that a State has developed according to the provisions and requirements of this part, regardless of when the State developed the STIP.

(c) On and after May 27, 2018 (2 years after the publication date of this rule), the FHWA and the FTA will take action on an updated or amended STIP developed under the provisions of this part, even if the State has not yet adopted a new long-range statewide transportation plan under the provisions of this part, as long as the underlying transportation planning process is consistent with the requirements in the MAP-21.

(d) On or after May 27, 2018, a State may make an administrative modification to a STIP that conforms to either the SAFETEA-LU requirements or to the provisions and requirements of this part.

(e) Two years from the effective date of each rule establishing performance measures under 23 U.S.C. 150(c), 49 U.S.C. 5326, or 49 U.S.C. 5329, FHWA/FTA will only approve an updated or amended STIP that is based on a statewide transportation planning process that meets the performance-based planning requirements in this part and in such a rule.

(f) Prior to 2 years from the effective date of each rule establishing performance measures under 23 U.S.C. 150(c), 49 U.S.C. 5326, or 49 U.S.C. 5329, a State may adopt a long-range statewide transportation plan that it has developed using the SAFETEA-LU requirements or the performance-based provisions and requirements of this part and in such a rule. Two years on or after the effective date of each rule establishing performance measures under 23 U.S.C. 150(c), 49 U.S.C. 5326, or 49 U.S.C. 5329, a State may only adopt a long-range statewide transportation plan that it has developed according to the performance-based provisions and re-

quirements of this part and in such a rule.

(g) With respect to requirements added in § 450.208(a)(1) on January 19, 2017: On and after the date 2 years after the date that the U.S. Census Bureau releases its notice of Qualifying Urban Areas following the 2020 census, the State(s), the MPO(s) and the operators of public transportation must comply with the new requirements, including the requirement for a current metropolitan planning agreement that identifies coordination strategies that support cooperative decision-making and the resolution of disagreements.

[81 FR 34135, May 27, 2016, as amended at 81 FR 93470, Dec. 20, 2016]

Subpart C—Metropolitan Transportation Planning and Programming

§ 450.300 Purpose.

The purposes of this subpart are to implement the provisions of 23 U.S.C. 134, 23 U.S.C. 150, and 49 U.S.C. 5303, as amended, which:

(a) Set forth the national policy that the MPO designated for each UZA is to carry out a continuing, cooperative, and comprehensive performance-based multimodal transportation planning process for its MPA, including the development of a metropolitan transportation plan and a TIP, that encourages and promotes the safe and efficient development, management, and operation of surface transportation systems to serve the mobility needs of people and freight (including accessible pedestrian walkways, bicycle transportation facilities, and intermodal facilities that support intercity transportation, including intercity buses and intercity bus facilities and commuter vanpool providers) and foster economic growth and development, and takes into consideration resiliency needs, while minimizing transportation-related fuel consumption and air pollution; and

(b) Encourage continued development and improvement of metropolitan transportation planning processes guided by the planning factors set

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forth in 23 U.S.C. 134(h) and 49 U.S.C. 5303(h).

[81 FR 34135, May 27, 2016, as amended at 81 FR 93470, Dec. 20, 2016]

§ 450.302 Applicability.

The provisions of this subpart are applicable to organizations and entities responsible for the transportation planning and programming processes in metropolitan planning areas.

§ 450.304 Definitions.

Except as otherwise provided in subpart A of this part, terms defined in 23 U.S.C. 101(a) and 49 U.S.C. 5302 are used in this subpart as so defined.

§ 450.306 Scope of the metropolitan transportation planning process.

(a) To accomplish the objectives in § 450.300 and § 450.306(b), metropolitan planning organizations designated under § 450.310, in cooperation with the State and public transportation operators, shall develop long-range transportation plans and TIPs through a performance-driven, outcome-based approach to planning for metropolitan areas of the State.

(b) The metropolitan transportation planning process shall be continuous, cooperative, and comprehensive, and provide for consideration and implementation of projects, strategies, and services that will address the following factors:

- (1) Support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;
- (2) Increase the safety of the transportation system for motorized and non-motorized users;
- (3) Increase the security of the transportation system for motorized and non-motorized users;
- (4) Increase accessibility and mobility of people and freight;
- (5) Protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;
- (6) Enhance the integration and connectivity of the transportation sys-

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tem, across and between modes, for people and freight;

(7) Promote efficient system management and operation;

(8) Emphasize the preservation of the existing transportation system;

(9) Improve the resiliency and reliability of the transportation system and reduce or mitigate stormwater impacts of surface transportation; and

(10) Enhance travel and tourism.

(c) Consideration of the planning factors in paragraph (b) of this section shall be reflected, as appropriate, in the metropolitan transportation planning process. The degree of consideration and analysis of the factors should be based on the scale and complexity of many issues, including transportation system development, land use, employment, economic development, human and natural environment (including Section 4(f) properties as defined in 23 CFR 774.17), and housing and community development.

(d) *Performance-based approach.* (1) The metropolitan transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decisionmaking to support the national goals described in 23 U.S.C. 150(b) and the general purposes described in 49 U.S.C. 5301(c).

(2) *Establishment of performance targets by metropolitan planning organizations.*

(i) Each metropolitan planning organization shall establish performance targets that address the performance measures or standards established under 23 CFR part 490 (where applicable), 49 U.S.C. 5326(c), and 49 U.S.C. 5329(d) to use in tracking progress toward attainment of critical outcomes for the region of the metropolitan planning organization.

(ii) The selection of targets that address performance measures described in 23 U.S.C. 150(c) shall be in accordance with the appropriate target setting framework established at 23 CFR part 490, and shall be coordinated with the relevant State(s) to ensure consistency, to the maximum extent practicable.

(iii) The selection of performance targets that address performance measures described in 49 U.S.C. 5326(c) and 49 U.S.C. 5329(d) shall be coordinated,

to the maximum extent practicable, with public transportation providers to ensure consistency with the performance targets that public transportation providers establish under 49 U.S.C. 5326(c) and 49 U.S.C. 5329(d).

(3) Each MPO shall establish the performance targets under paragraph (d)(2) of this section not later than 180 days after the date on which the relevant State or provider of public transportation establishes the performance targets.

(4) An MPO shall integrate in the metropolitan transportation planning process, directly or by reference, the goals, objectives, performance measures, and targets described in other State transportation plans and transportation processes, as well as any plans developed under 49 U.S.C. chapter 53 by providers of public transportation, required as part of a performance-based program including:

(i) The State asset management plan for the NHS, as defined in 23 U.S.C. 119(e) and the Transit Asset Management Plan, as discussed in 49 U.S.C. 5326;

(ii) Applicable portions of the HSIP, including the SHSP, as specified in 23 U.S.C. 148;

(iii) The Public Transportation Agency Safety Plan in 49 U.S.C. 5329(d);

(iv) Other safety and security planning and review processes, plans, and programs, as appropriate;

(v) The Congestion Mitigation and Air Quality Improvement Program performance plan in 23 U.S.C. 149(l), as applicable;

(vi) Appropriate (metropolitan) portions of the State Freight Plan (MAP-21 section 1118);

(vii) The congestion management process, as defined in 23 CFR 450.322, if applicable; and

(viii) Other State transportation plans and transportation processes required as part of a performance-based program.

(5) In MPAs in which multiple MPOs have been designated, the MPOs shall jointly establish, for the MPA, the performance targets that address performance measures or standards established under 23 CFR part 490 (where applicable), 49 U.S.C. 5326(c) and 49 U.S.C. 5329(d).

(e) The failure to consider any factor specified in paragraph (b) or (d) of this section shall not be reviewable by any court under title 23 U.S.C., 49 U.S.C. Chapter 53, subchapter II of title 5, U.S.C. Chapter 5, or title 5 U.S.C. Chapter 7 in any matter affecting a metropolitan transportation plan, TIP, a project or strategy, or the certification of a metropolitan transportation planning process.

(f) An MPO shall carry out the metropolitan transportation planning process in coordination with the statewide transportation planning process required by 23 U.S.C. 135 and 49 U.S.C. 5304.

(g) The metropolitan transportation planning process shall (to the maximum extent practicable) be consistent with the development of applicable regional intelligent transportation systems (ITS) architectures, as defined in 23 CFR part 940.

(h) Preparation of the coordinated public transit-human services transportation plan, as required by 49 U.S.C. 5310, should be coordinated and consistent with the metropolitan transportation planning process.

(i) In an UZA not designated as a TMA that is an air quality attainment area, the MPO(s) may propose and submit to the FHWA and the FTA for approval a procedure for developing an abbreviated metropolitan transportation plan and TIP. In developing proposed simplified planning procedures, consideration shall be given to whether the abbreviated metropolitan transportation plan and TIP will achieve the purposes of 23 U.S.C. 134, 49 U.S.C. 5303, and this part, taking into account the complexity of the transportation problems in the area. The MPO(s) shall develop simplified procedures in cooperation with the State(s) and public transportation operator(s).

[81 FR 34135, May 27, 2016, as amended at 81 FR 93470, Dec. 20, 2016]

§ 450.308 Funding for transportation planning and unified planning work programs.

(a) Funds provided under 23 U.S.C. 104(d), 49 U.S.C. 5305(d), and 49 U.S.C.

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5307, are available to MPOs to accomplish activities described in this subpart. At the State's option, funds provided under 23 U.S.C. 104(b)(2) and 23 U.S.C. 505 may also be provided to MPOs for metropolitan transportation planning. At the option of the State and operators of public transportation, funds provided under 49 U.S.C. 5305(e) may also be provided to MPOs for activities that support metropolitan transportation planning. In addition, an MPO serving an urbanized area with a population over 200,000, as designated by the Bureau of the Census, may at its discretion use funds sub-allocated under 23 U.S.C. 133(d)(4) for metropolitan transportation planning activities.

(b) An MPO shall document metropolitan transportation planning activities performed with funds provided under title 23 U.S.C. and title 49 U.S.C. Chapter 53 in a unified planning work program (UPWP) or simplified statement of work in accordance with the provisions of this section and 23 CFR part 420.

(c) Except as provided in paragraph (d) of this section, each MPO, in cooperation with the State(s) and public transportation operator(s), shall develop a UPWP that includes a discussion of the planning priorities facing the MPA. The UPWP shall identify work proposed for the next 1- or 2-year period by major activity and task (including activities that address the planning factors in § 450.306(b)), in sufficient detail to indicate who (e.g., MPO, State, public transportation operator, local government, or consultant) will perform the work, the schedule for completing the work, the resulting products, the proposed funding by activity/task, and a summary of the total amounts and sources of Federal and matching funds.

(d) With the prior approval of the State and the FHWA and the FTA, an MPO in an area not designated as a TMA may prepare a simplified statement of work, in cooperation with the State(s) and the public transportation operator(s), in lieu of a UPWP. A simplified statement of work shall include a description of the major activities to be performed during the next 1- or 2-year period, who (e.g., State, MPO, public transportation operator, local

government, or consultant) will perform the work, the resulting products, and a summary of the total amounts and sources of Federal and matching funds. If a simplified statement of work is used, it may be submitted as part of the State's planning work program, in accordance with 23 CFR part 420.

(e) Arrangements may be made with the FHWA and the FTA to combine the UPWP or simplified statement of work with the work program(s) for other Federal planning funds.

(f) Administrative requirements for UPWPs and simplified statements of work are contained in 23 CFR part 420 and FTA Circular C8100, as amended (Program Guidance for Metropolitan Planning and State Planning and Research Program Grants).

§ 450.310 Metropolitan planning organization designation and redesignation.

(a) To carry out the metropolitan transportation planning process under this subpart, an MPO shall be designated for each urbanized area with a population of more than 50,000 individuals (as determined by the Bureau of the Census).

(b) MPO designation shall be made by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population (including the largest incorporated city, based on population, as named by the Bureau of the Census) or in accordance with procedures established by applicable State or local law.

(c) The FHWA and the FTA shall identify as a TMA each urbanized area with a population of over 200,000 individuals, as defined by the Bureau of the Census. The FHWA and the FTA shall also designate any urbanized area as a TMA on the request of the Governor and the MPO designated for that area.

(d) TMA structure:

(1) Not later than October 1, 2014, each metropolitan planning organization that serves a designated TMA shall consist of:

(i) Local elected officials;

(ii) Officials of public agencies that administer or operate major modes of transportation in the metropolitan

area, including representation by providers of public transportation; and

(iii) Appropriate State officials.

(2) An MPO may be restructured to meet the requirements of this paragraph (d) without undertaking a redesignation.

(3) *Representation.* (i) Designation or selection of officials or representatives under paragraph (d)(1) of this section shall be determined by the MPO according to the bylaws or enabling statute of the organization.

(ii) Subject to the bylaws or enabling statute of the MPO, a representative of a provider of public transportation may also serve as a representative of a local municipality.

(iii) An official described in paragraph (d)(1)(ii) shall have responsibilities, actions, duties, voting rights, and any other authority commensurate with other officials described in paragraph (d)(1) of this section.

(4) Nothing in this section shall be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities—

(i) To develop the plans and TIPs for adoption by an MPO; and

(ii) To develop long-range capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law.

(e) Except as provided in this paragraph, only one MPO shall be designated for each MPA. More than one MPO may be designated to serve an MPA only if the Governor(s) and the existing MPO(s), if applicable, determine that the size and complexity of the MPA make designation of more than one MPO in the MPA appropriate. In those cases where the Governor(s) and existing MPO(s) determine that the size and complexity of the MPA do make it appropriate that two or more MPOs serve within the same MPA, the Governor and affected MPOs by agreement shall jointly establish or adjust the boundaries for each MPO within the MPA, and the MPOs shall establish official, written agreements that clearly identify areas of coordination, the division of transportation planning responsibilities within the MPA among and between the MPOs, and procedures

for joint decisionmaking and the resolution of disagreements. If multiple MPOs were designated in a single MPA prior to this rule or in multiple MPAs that merged into a single MPA following a Decennial Census by the Bureau of the Census, and the Governor(s) and the existing MPOs determine that the size and complexity do not make the designation of more than one MPO in the MPA appropriate, then those MPOs must merge together in accordance with the redesignation procedures in this section.

(f) Nothing in this subpart shall be deemed to prohibit an MPO from using the staff resources of other agencies, non-profit organizations, or contractors to carry out selected elements of the metropolitan transportation planning process.

(g) An MPO designation shall remain in effect until an official redesignation has been made in accordance with this section.

(h) An existing MPO may be redesignated only by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the existing metropolitan planning area population (including the largest incorporated city, based on population, as named by the Bureau of the Census).

(i) For the purposes of redesignation, units of general purpose local government may be defined as elected officials from each unit of general purpose local government located within the metropolitan planning area served by the existing MPO.

(j) Redesignation of an MPO (in accordance with the provisions of this section) is required whenever the existing MPO proposes to make:

(1) A substantial change in the proportion of voting members on the existing MPO representing the largest incorporated city, other units of general purpose local government served by the MPO, and the State(s); or

(2) A substantial change in the decisionmaking authority or responsibility of the MPO, or in decisionmaking procedures established under MPO bylaws.

(k) Redesignation of an MPO serving a multistate metropolitan planning area requires agreement between the

Governors of each State served by the existing MPO and units of general purpose local government that together represent at least 75 percent of the existing metropolitan planning area population (including the largest incorporated city, based on population, as named by the Bureau of the Census).

(1) The following changes to an MPO do not require a redesignation (as long as they do not trigger a substantial change as described in paragraph (j) of this section):

(1) The identification of a new urbanized area (as determined by the Bureau of the Census) within an existing metropolitan planning area;

(2) Adding members to the MPO that represent new units of general purpose local government resulting from expansion of the metropolitan planning area;

(3) Adding members to satisfy the specific membership requirements described in paragraph (d) of this section for an MPO that serves a TMA; or

(4) Periodic rotation of members representing units of general-purpose local government, as established under MPO by-laws.

(m) Each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate MPOs shall, to the extent practicable, provide coordinated transportation planning for the entire metropolitan area. The consent of Congress is granted to any two or more States to:

(1) Enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under 23 U.S.C. 134 and 49 U.S.C. 5303 as the activities pertain to interstate areas and localities within the States; and

(2) Establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

[81 FR 34135, May 27, 2016, as amended at 81 FR 93470, Dec. 20, 2016]

§ 450.312 Metropolitan Planning Area boundaries.

(a) At a minimum, the boundaries of an MPA shall encompass the entire existing UZA (as defined by the Bureau of the Census) plus the contiguous area

expected to become urbanized within a 20-year forecast period for the metropolitan transportation plan.

(1) Subject to this minimum requirement, the boundaries of an MPA shall be determined through an agreement between the MPO and the Governor.

(2) If two or more MPAs otherwise include the same non-urbanized area that is expected to become urbanized within a 20-year forecast period for the transportation plan, the Governor and the relevant MPOs are required to agree on the final boundaries of the MPA or MPAs such that the boundaries of the MPAs do not overlap. In such situations, the Governor and MPOs are encouraged, but not required, to combine the MPAs into a single MPA. Merger into a single MPA also require the MPOs to merge in accordance with the redesignation procedures described in § 450.310(h), unless the Governor and MPO(s) determine that the size and complexity of the MPA make multiple MPOs appropriate, as described in § 450.310(e).

(3) The MPA boundaries may be further expanded to encompass the entire metropolitan statistical area or combined statistical area, as defined by the Office of Management and Budget.

(b) The boundaries for an MPA that includes an UZA designated as a non-attainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 *et seq.*) after August 10, 2005, may be established to coincide with the designated boundaries of the ozone and/or carbon monoxide nonattainment area, in accordance with this section and the requirements in § 450.310(b).

(c) An MPA boundary may encompass more than one UZA, but each UZA must be included in its entirety.

(d) MPA boundaries may be established to coincide with the geography of regional economic development and growth forecasting areas.

(e) Identification of new UZAs within an existing MPA by the Bureau of the Census shall not require redesignation of the existing MPO.

(f) In multistate metropolitan areas, the Governors with responsibility for a portion of the multistate metropolitan area, the appropriate MPO(s), and the public transportation operator(s) are strongly encouraged to coordinate

transportation planning for the entire multistate metropolitan area. States involved in such multistate transportation planning may:

(1) Enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

(2) Establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

(g) The MPA boundaries shall not overlap with each other.

(h) Subject to paragraph (i) of this section, where the Governor(s) and MPO(s) have determined that the size and complexity of the MPA make it appropriate to have more than one MPO designated for an MPA, the MPOs within the same MPA shall, at a minimum:

(1) Establish written agreements that clearly identify coordination processes, the division of transportation planning responsibilities among and between the MPOs, and procedures for joint decisionmaking and the resolution of disagreements;

(2) Through a joint decisionmaking process, develop a single TIP and a single metropolitan transportation plan for the entire MPA as required under §§ 450.324(c) and 450.326(a); and

(3) Establish the boundaries for each MPO within the MPA, by agreement among all affected MPOs and the Governor(s).

(i) Upon written request from all MPOs in an MPA and the Governor(s) of each State in the MPA, the Secretary may approve an exception to the requirements for a single metropolitan transportation plan, a single TIP, and jointly-established targets if the request satisfies the following requirements.

(1) The written request must include documentation showing compliance with the requirements in paragraph (h)(2) of this section is not feasible for reasons beyond the reasonable control of the Governor(s) and MPOs, such as clear and convincing evidence that

(i) The MPOs cannot meet paragraph (h)(2) requirements because of the ex-

traordinary size of the MPA, the large number of MPOs or State/local governmental jurisdictions required to participate, and/or because of Clean Air Act planning requirements; or

(ii) Complying with paragraph (h)(2) requirements would produce adverse results that contravene the effective regional planning purposes of paragraph (h)(2).

(2) The request must include documentation demonstrating that:

(i) The MPOs already use coordinated planning procedures that result in consistent plans, TIPs, performance targets, and air quality conformity analyses and other planning products that effectively address regional transportation and air quality issues;

(ii) The MPOs have jointly adopted a formal written agreement with adequate procedures for coordination among the MPOs to achieve the effective regional planning purposes of paragraph (h)(2) of this section; and

(iii) Coordination and decision-making during at least the two most recent STIP update cycles that produced results consistent with the effective planning purposes of paragraph (h)(2) of this section.

(3) Based on the documentation provided with the request, the Secretary will determine whether to approve an exception to the requirements of paragraph (h)(2) of this section. If the Secretary determines that the request does not meet the requirements established under this paragraph, the Secretary will send the MPOs and Governor(s) a written notice of the denial of the exception, including a description of the deficiencies. The Governor(s) and MPOs shall have 90 days from receipt of the notice to address the deficiencies identified in the notice and submit supplemental information addressing the identified deficiencies to the Secretary for review and a final determination. The Secretary may extend the 90-day period to cure deficiencies upon request.

(4) An approved exception is permanent. When FHWA and FTA do certification reviews and make planning findings, FHWA and FTA will evaluate

whether the MPOs covered by the exception are sustaining effective coordination processes that meet the requirements in paragraphs (i)(2)(i) and (ii) of this section.

(j) The Governor(s) and MPO(s) (in cooperation with the State and public transportation operator(s)) shall review the MPA boundaries after each Census to determine if existing MPA boundaries meet the minimum statutory requirements for new and updated UZA(s), and the Governor(s) and MPOs shall adjust them as necessary in order to encompass the entire existing UZA(s) plus the contiguous area expected to become urbanized within the 20-year forecast period of the metropolitan transportation plan. If after a Census, two previously separate UZAs are defined as a single UZA, not later than 2 years after the release of the U.S. Bureau of the Census notice of the Qualifying Urban Areas for a decennial census, the Governor(s) and MPO(s) shall redetermine the affected MPAs as a single MPA that includes the entire new UZA plus the contiguous area expected to become urbanized within the 20-year forecast period of the metropolitan transportation plan. As appropriate, additional adjustments should be made to reflect the most comprehensive boundary to foster an effective planning process that ensures connectivity between modes, improves access to modal systems, and promotes efficient overall transportation investment strategies. If more than one MPO is designated for UZAs that are merged following a Decennial Census by the Bureau of the Census, the Governor(s) and the MPOs shall comply with the MPA boundary and MPO boundaries agreement provisions in §§ 450.310 and 450.312, and the Governor(s) and MPOs shall determine whether the size and complexity of the MPA make it appropriate for there to be more than one MPO designated within the MPA. If the size and complexity of the MPA do not make it appropriate to have multiple MPOs, the MPOs shall merge, in accordance with the redesignation procedures in § 450.310(h). If the size and complexity do warrant the designation of multiple MPOs within the MPA, the MPOs shall comply with the requirements for jointly established perform-

ance targets, and a single metropolitan transportation plan and TIP for the entire MPA, before the next metropolitan transportation plan update that occurs on or after 2 years after the release of the Qualifying Urban Areas for the Decennial Census by the Bureau of the Census.

(k) The Governor and MPOs are encouraged to consider merging multiple MPAs into a single MPA when:

(1) Two or more UZAs are adjacent to each other;

(2) Two or more UZAs are expected to expand and become adjacent within a 20-year forecast period for the transportation plan; or

(3) Two or more neighboring MPAs otherwise both include the same non-UZA that is expected to become urbanized within a 20-year forecast period for the metropolitan transportation plan.

(l) Following MPA boundary approval by the MPO(s) and the Governor, the MPA boundary descriptions shall be provided for informational purposes to the FHWA and the FTA. The MPA boundary descriptions shall be submitted either as a geo-spatial database or described in sufficient detail to enable the boundaries to be accurately delineated on a map.

[81 FR 93470, Dec. 20, 2016]

§ 450.314 Metropolitan planning agreements.

(a) The MPO(s), the State(s), and the providers of public transportation shall cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process. These responsibilities shall be clearly identified in written agreements among the MPO(s), the State(s), and the providers of public transportation serving the MPA. To the extent possible, a single agreement among all responsible parties should be developed. The written agreement(s) shall include specific provisions for the development of financial plans that support the metropolitan transportation plan (see § 450.324) and the metropolitan TIP (see § 450.326), and development of the annual listing of obligated projects (see § 450.334).

(b) The MPO(s), the State(s), and the providers of public transportation should periodically review and update

the agreement, as appropriate, to reflect effective changes.

(c) If the MPA does not include the entire nonattainment or maintenance area, there shall be a written agreement among the State department of transportation, State air quality agency, affected local agencies, and the MPO(s) describing the process for cooperative planning and analysis of all projects outside the MPA within the nonattainment or maintenance area. The agreement must also indicate how the total transportation-related emissions for the nonattainment or maintenance area, including areas outside the MPA, will be treated for the purposes of determining conformity in accordance with the EPA's transportation conformity regulations (40 CFR part 93, subpart A). The agreement shall address policy mechanisms for resolving conflicts concerning transportation related emissions that may arise between the MPA and the portion of the nonattainment or maintenance area outside the MPA.

(d) In nonattainment or maintenance areas, if the MPO is not the designated agency for air quality planning under section 174 of the Clean Air Act (42 U.S.C. 7504), there shall be a written agreement between the MPO and the designated air quality planning agency describing their respective roles and responsibilities for air quality related transportation planning.

(e) If more than one MPO has been designated to serve an MPA, there shall be a written agreement among the MPOs, the State(s), and the public transportation operator(s) describing how the metropolitan transportation planning processes will be coordinated to assure the development of a single metropolitan transportation plan and TIP for the MPA. In cases in which a transportation investment extends across the boundaries of more than one MPA, the MPOs shall coordinate to assure the development of consistent metropolitan transportation plans and TIPs with respect to that transportation improvement. If any part of the UZA is a nonattainment or maintenance area, the agreement also shall include State and local air quality agencies. If more than one MPO has been designated to serve an MPA, the

metropolitan transportation planning processes for affected MPOs must reflect coordinated data collection, analysis, and planning assumptions across the MPA. Coordination of data collection, analysis, and planning assumptions is also strongly encouraged for neighboring MPOs that are not within the same MPA. Coordination efforts and outcomes shall be documented in subsequent transmittals of the UPWP and other planning products, including the metropolitan transportation plan and TIP, to the State(s), the FHWA, and the FTA.

(f) Where the boundaries of the MPA extend across two or more States, the Governors with responsibility for a portion of the multistate MPA, the appropriate MPO(s), and the public transportation operator(s) shall coordinate transportation planning for the entire multistate MPA, including jointly developing planning products for the MPA. States involved in such multistate transportation planning may:

(1) Enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

(2) Establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

(g) If an MPA includes a UZA that has been designated as a TMA in addition to an UZA that is not designated as a TMA, the non-TMA UZA shall not be treated as a TMA. However, if more than one MPO serves the MPA, a written agreement shall be established between the MPOs within the MPA boundaries, which clearly identifies the roles and responsibilities of each MPO in meeting specific TMA requirements (e.g., congestion management process, Surface Transportation Program funds suballocated to the UZA over 200,000 population, and project selection).

(h) The MPO(s), State(s), and the providers of public transportation shall jointly agree upon and develop specific written provisions for cooperatively

developing and sharing information related to transportation performance data, the selection of performance targets, the reporting of performance targets, the reporting of performance to be used in tracking progress toward attainment of critical outcomes for the region of the MPO (see § 450.306(d)), and the collection of data for the State asset management plans for the NHS for each of the following circumstances: When one MPO serves an UZA, when more than one MPO serves an UZA, and when an MPA includes an UZA that has been designated as a TMA as well as a UZA that is not a TMA. These provisions shall be documented either as part of the metropolitan planning agreements required under paragraphs (a), (e), and (g) of this section, or documented it in some other means outside of the metropolitan planning agreements as determined cooperatively by the MPO(s), State(s), and providers of public transportation.

[81 FR 93472, Dec. 20, 2016]

§ 450.316 Interested parties, participation, and consultation.

(a) The MPO shall develop and use a documented participation plan that defines a process for providing individuals, affected public agencies, representatives of public transportation employees, public ports, freight shippers, providers of freight transportation services, private providers of transportation (including intercity bus operators, employer-based commuting programs, such as carpool program, vanpool program, transit benefit program, parking cash-out program, shuttle program, or telework program), representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with reasonable opportunities to be involved in the metropolitan transportation planning process.

(1) The MPO shall develop the participation plan in consultation with all interested parties and shall, at a minimum, describe explicit procedures, strategies, and desired outcomes for:

(i) Providing adequate public notice of public participation activities and time for public review and comment at

key decision points, including a reasonable opportunity to comment on the proposed metropolitan transportation plan and the TIP;

(ii) Providing timely notice and reasonable access to information about transportation issues and processes;

(iii) Employing visualization techniques to describe metropolitan transportation plans and TIPs;

(iv) Making public information (technical information and meeting notices) available in electronically accessible formats and means, such as the World Wide Web;

(v) Holding any public meetings at convenient and accessible locations and times;

(vi) Demonstrating explicit consideration and response to public input received during the development of the metropolitan transportation plan and the TIP;

(vii) Seeking out and considering the needs of those traditionally underserved by existing transportation systems, such as low-income and minority households, who may face challenges accessing employment and other services;

(viii) Providing an additional opportunity for public comment, if the final metropolitan transportation plan or TIP differs significantly from the version that was made available for public comment by the MPO and raises new material issues that interested parties could not reasonably have foreseen from the public involvement efforts;

(ix) Coordinating with the statewide transportation planning public involvement and consultation processes under subpart B of this part; and

(x) Periodically reviewing the effectiveness of the procedures and strategies contained in the participation plan to ensure a full and open participation process.

(2) When significant written and oral comments are received on the draft metropolitan transportation plan and TIP (including the financial plans) as a result of the participation process in this section or the interagency consultation process required under the EPA transportation conformity regulations (40 CFR part 93, subpart A), a summary, analysis, and report on the

disposition of comments shall be made as part of the final metropolitan transportation plan and TIP.

(3) A minimum public comment period of 45 calendar days shall be provided before the initial or revised participation plan is adopted by the MPO. Copies of the approved participation plan shall be provided to the FHWA and the FTA for informational purposes and shall be posted on the World Wide Web, to the maximum extent practicable.

(b) In developing metropolitan transportation plans and TIPs, the MPO should consult with agencies and officials responsible for other planning activities within the MPA that are affected by transportation (including State and local planned growth, economic development, tourism, natural disaster risk reduction, environmental protection, airport operations, or freight movements) or coordinate its planning process (to the maximum extent practicable) with such planning activities. In addition, the MPO(s) shall develop the metropolitan transportation plans and TIPs with due consideration of other related planning activities within the metropolitan area, and the process shall provide for the design and delivery of transportation services within the area that are provided by:

(1) Recipients of assistance under title 49 U.S.C. Chapter 53;

(2) Governmental agencies and non-profit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the U.S. Department of Transportation to provide non-emergency transportation services; and

(3) Recipients of assistance under 23 U.S.C. 201–204.

(c) When the MPA includes Indian Tribal lands, the MPO(s) shall appropriately involve the Indian Tribal government(s) in the development of the metropolitan transportation plan and the TIP.

(d) When the MPA includes Federal public lands, the MPO(s) shall appropriately involve the Federal land management agencies in the development of the metropolitan transportation plan and the TIP.

(e) MPOs shall, to the extent practicable, develop a documented process(es) that outlines roles, responsibilities, and key decision points for consulting with other governments and agencies, as defined in paragraphs (b), (c), and (d) of this section, which may be included in the agreement(s) developed under § 450.314.

[81 FR 34135, May 27, 2016, as amended at 81 FR 93473, Dec. 20, 2016]

§ 450.318 Transportation planning studies and project development.

(a) Pursuant to section 1308 of the Transportation Equity Act for the 21st Century, TEA–21 (Pub. L. 105–178), an MPO(s), State(s), or public transportation operator(s) may undertake a multimodal, systems-level corridor or subarea planning study as part of the metropolitan transportation planning process. To the extent practicable, development of these transportation planning studies shall involve consultation with, or joint efforts among, the MPO(s), State(s), and/or public transportation operator(s). The results or decisions of these transportation planning studies may be used as part of the overall project development process consistent with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and associated implementing regulations (23 CFR part 771 and 40 CFR parts 1500–1508). Specifically, these corridor or subarea studies may result in producing any of the following for a proposed transportation project:

(1) Purpose and need or goals and objective statement(s);

(2) General travel corridor and/or general mode(s) definition (e.g., highway, transit, or a highway/transit combination);

(3) Preliminary screening of alternatives and elimination of unreasonable alternatives;

(4) Basic description of the environmental setting; and/or

(5) Preliminary identification of environmental impacts and environmental mitigation.

(b) Publicly available documents or other source material produced by, or in support of, the transportation planning process described in this subpart

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may be incorporated directly or by reference into subsequent NEPA documents, in accordance with 40 CFR 1502.21, if:

(1) The NEPA lead agencies agree that such incorporation will aid in establishing or evaluating the purpose and need for the Federal action, reasonable alternatives, cumulative or other impacts on the human and natural environment, or mitigation of these impacts; and

(2) The systems-level, corridor, or subarea planning study is conducted with:

(i) Involvement of interested State, local, Tribal, and Federal agencies;

(ii) Public review;

(iii) Reasonable opportunity to comment during the metropolitan transportation planning process and development of the corridor or subarea planning study;

(iv) Documentation of relevant decisions in a form that is identifiable and available for review during the NEPA scoping process and can be appended to or referenced in the NEPA document; and

(v) The review of the FHWA and the FTA, as appropriate.

(c) By agreement of the NEPA lead agencies, the above integration may be accomplished through tiering (as described in 40 CFR 1502.20), incorporating the subarea or corridor planning study into the draft Environmental Impact Statement (EIS) or Environmental Assessment, or other means that the NEPA lead agencies deem appropriate.

(d) Additional information to further explain the linkages between the transportation planning and project development/NEPA processes is contained in Appendix A to this part, including an explanation that it is non-binding guidance material. The guidance in Appendix A applies only to paragraphs (a)–(c) in this section.

(e) In addition to the process for incorporation directly or by reference outlined in paragraph (b) of this section, an additional authority for integrating planning products into the environmental review process exists in 23 U.S.C. 168. As provided in 23 U.S.C. 168(f):

(1) The statutory authority in 23 U.S.C. 168 shall not be construed to limit in any way the continued use of processes established under other parts of this section or under an authority established outside of this part, and the use of one of the processes in this section does not preclude the subsequent use of another process in this section or an authority outside of this part.

(2) The statute does not restrict the initiation of the environmental review process during planning.

§ 450.320 Development of programmatic mitigation plans.

(a) An MPO may utilize the optional framework in this section to develop programmatic mitigation plans as part of the metropolitan transportation planning process to address the potential environmental impacts of future transportation projects. The MPO, in consultation with the FHWA and/or the FTA and with the agency or agencies with jurisdiction and special expertise over the resources being addressed in the plan, will determine:

(1) *Scope.* (i) An MPO may develop a programmatic mitigation plan on a local, regional, ecosystem, watershed, statewide or similar scale.

(ii) The plan may encompass multiple environmental resources within a defined geographic area(s) or may focus on a specific type(s) of resource(s) such as aquatic resources, parkland, or wildlife habitat.

(iii) The plan may address or consider impacts from all projects in a defined geographic area(s) or may focus on a specific type(s) of project(s).

(2) *Contents.* The programmatic mitigation plan may include:

(i) An assessment of the existing condition of natural and human environmental resources within the area covered by the plan, including an assessment of historic and recent trends and/or any potential threats to those resources.

(ii) An identification of economic, social, and natural and human environmental resources within the geographic area that may be impacted and considered for mitigation. Examples of these resources include wetlands, streams, rivers, stormwater, parklands, cultural

resources, historic resources, farmlands, archeological resources, threatened or endangered species, and critical habitat. This may include the identification of areas of high conservation concern or value and thus worthy of avoidance.

(iii) An inventory of existing or planned environmental resource banks for the impacted resource categories such as wetland, stream, stormwater, habitat, species, and an inventory of federally, State, or locally approved in-lieu-of-fee programs.

(iv) An assessment of potential opportunities to improve the overall quality of the identified environmental resources through strategic mitigation for impacts of transportation projects which may include the prioritization of parcels or areas for acquisition and/or potential resource banking sites.

(v) An adoption or development of standard measures or operating procedures for mitigating certain types of impacts; establishment of parameters for determining or calculating appropriate mitigation for certain types of impacts, such as mitigation ratios, or criteria for determining appropriate mitigation sites.

(vi) Adaptive management procedures, such as protocols or procedures that involve monitoring actual impacts against predicted impacts over time and adjusting mitigation measures in response to information gathered through the monitoring.

(vii) Acknowledgement of specific statutory or regulatory requirements that must be satisfied when determining appropriate mitigation for certain types of resources.

(b) A MPO may adopt a programmatic mitigation plan developed pursuant to paragraph (a), or developed pursuant to an alternative process as provided for in paragraph (f) of this section through the following process:

(1) Consult with each agency with jurisdiction over the environmental resources considered in the programmatic mitigation plan;

(2) Make available a draft of the programmatic mitigation plan for review and comment by appropriate environmental resource agencies and the public;

(3) Consider comments received from such agencies and the public on the draft plan; and

(4) Address such comments in the final programmatic mitigation plan.

(c) A programmatic mitigation plan may be integrated with other plans, including watershed plans, ecosystem plans, species recovery plans, growth management plans, State Wildlife Action Plans, and land use plans.

(d) If a programmatic mitigation plan has been adopted pursuant to paragraph (b), any Federal agency responsible for environmental reviews, permits, or approvals for a transportation project shall give substantial weight to the recommendations in the programmatic mitigation plan when carrying out its responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA) or other Federal environmental law.

(e) Nothing in this section limits the use of programmatic approaches for reviews under NEPA.

(f) Nothing in this section prohibits the development, as part of or separate from the transportation planning process, of a programmatic mitigation plan independent of the framework described in paragraph (a) of this section. Further, nothing in this section prohibits the adoption of a programmatic mitigation plan in the metropolitan planning process that was developed under another authority, independent of the framework described in paragraph (a).

§ 450.322 Congestion management process in transportation management areas.

(a) The transportation planning process in a TMA shall address congestion management through a process that provides for safe and effective integrated management and operation of the multimodal transportation system, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under title 23 U.S.C. and title 49 U.S.C. Chapter 53 through the use of travel demand reduction (including intercity bus operators, employer-based commuting programs such as a carpool program, vanpool program, transit benefit program,

parking cash-out program, shuttle program, or telework program), job access projects, and operational management strategies.

(b) The development of a congestion management process should result in multimodal system performance measures and strategies that can be reflected in the metropolitan transportation plan and the TIP.

(c) The level of system performance deemed acceptable by State and local transportation officials may vary by type of transportation facility, geographic location (metropolitan area or subarea), and/or time of day. In addition, consideration should be given to strategies that manage demand, reduce single occupant vehicle (SOV) travel, improve transportation system management and operations, and improve efficient service integration within and across modes, including highway, transit, passenger and freight rail operations, and non-motorized transport. Where the addition of general purpose lanes is determined to be an appropriate congestion management strategy, explicit consideration is to be given to the incorporation of appropriate features into the SOV project to facilitate future demand management strategies and operational improvements that will maintain the functional integrity and safety of those lanes.

(d) The congestion management process shall be developed, established, and implemented as part of the metropolitan transportation planning process that includes coordination with transportation system management and operations activities. The congestion management process shall include:

(1) Methods to monitor and evaluate the performance of the multimodal transportation system, identify the underlying causes of recurring and non-recurring congestion, identify and evaluate alternative strategies, provide information supporting the implementation of actions, and evaluate the effectiveness of implemented actions;

(2) Definition of congestion management objectives and appropriate performance measures to assess the extent of congestion and support the evaluation of the effectiveness of congestion reduction and mobility enhancement

strategies for the movement of people and goods. Since levels of acceptable system performance may vary among local communities, performance measures should be tailored to the specific needs of the area and established cooperatively by the State(s), affected MPO(s), and local officials in consultation with the operators of major modes of transportation in the coverage area, including providers of public transportation;

(3) Establishment of a coordinated program for data collection and system performance monitoring to define the extent and duration of congestion, to contribute in determining the causes of congestion, and evaluate the efficiency and effectiveness of implemented actions. To the extent possible, this data collection program should be coordinated with existing data sources (including archived operational/ITS data) and coordinated with operations managers in the metropolitan area;

(4) Identification and evaluation of the anticipated performance and expected benefits of appropriate congestion management strategies that will contribute to the more effective use and improved safety of existing and future transportation systems based on the established performance measures. The following categories of strategies, or combinations of strategies, are some examples of what should be appropriately considered for each area:

(i) Demand management measures, including growth management, and congestion pricing;

(ii) Traffic operational improvements;

(iii) Public transportation improvements;

(iv) ITS technologies as related to the regional ITS architecture; and

(v) Where necessary, additional system capacity.

(5) Identification of an implementation schedule, implementation responsibilities, and possible funding sources for each strategy (or combination of strategies) proposed for implementation; and

(6) Implementation of a process for periodic assessment of the effectiveness of implemented strategies, in terms of the area's established performance measures. The results of this

evaluation shall be provided to decision makers and the public to provide guidance on selection of effective strategies for future implementation.

(e) In a TMA designated as nonattainment area for ozone or carbon monoxide pursuant to the Clean Air Act, Federal funds may not be programmed for any project that will result in a significant increase in the carrying capacity for SOVs (*i.e.*, a new general purpose highway on a new location or adding general purpose lanes, with the exception of safety improvements or the elimination of bottlenecks), unless the project is addressed through a congestion management process meeting the requirements of this section.

(f) In TMAs designated as nonattainment for ozone or carbon monoxide, the congestion management process shall provide an appropriate analysis of reasonable (including multimodal) travel demand reduction and operational management strategies for the corridor in which a project that will result in a significant increase in capacity for SOVs (as described in paragraph (d) of this section) is proposed to be advanced with Federal funds. If the analysis demonstrates that travel demand reduction and operational management strategies cannot fully satisfy the need for additional capacity in the corridor and additional SOV capacity is warranted, then the congestion management process shall identify all reasonable strategies to manage the SOV facility safely and effectively (or to facilitate its management in the future). Other travel demand reduction and operational management strategies appropriate for the corridor, but not appropriate for incorporation into the SOV facility itself, shall also be identified through the congestion management process. All identified reasonable travel demand reduction and operational management strategies shall be incorporated into the SOV project or committed to by the State and MPO for implementation.

(g) State laws, rules, or regulations pertaining to congestion management systems or programs may constitute the congestion management process, if the FHWA and the FTA find that the State laws, rules, or regulations are

consistent with, and fulfill the intent of, the purposes of 23 U.S.C. 134 and 49 U.S.C. 5303.

(h) *Congestion management plan.* A MPO serving a TMA may develop a plan that includes projects and strategies that will be considered in the TIP of such MPO.

(1) Such plan shall:

(i) Develop regional goals to reduce vehicle miles traveled during peak commuting hours and improve transportation connections between areas with high job concentration and areas with high concentrations of low-income households;

(ii) Identify existing public transportation services, employer based commuter programs, and other existing transportation services that support access to jobs in the region; and

(iii) Identify proposed projects and programs to reduce congestion and increase job access opportunities.

(2) In developing the congestion management plan, an MPO shall consult with employers, private and nonprofit providers of public transportation, transportation management organizations, and organizations that provide job access reverse commute projects or job-related services to low-income individuals.

§ 450.324 Development and content of the metropolitan transportation plan.

(a) The metropolitan transportation planning process shall include the development of a transportation plan addressing no less than a 20-year planning horizon as of the effective date. In formulating the transportation plan, the MPO(s) shall consider factors described in § 450.306 as the factors relate to a minimum 20-year forecast period. In nonattainment and maintenance areas, the effective date of the transportation plan shall be the date of a conformity determination issued by the FHWA and the FTA. In attainment areas, the effective date of the transportation plan shall be its date of adoption by the MPO(s).

(b) The transportation plan shall include both long-range and short-range strategies/actions that provide for the development of an integrated

multimodal transportation system (including accessible pedestrian walkways and bicycle transportation facilities) to facilitate the safe and efficient movement of people and goods in addressing current and future transportation demand.

(c) If more than one MPO has been designated to serve an MPA, those MPOs within the MPA shall:

(1) Jointly develop a single metropolitan transportation plan for the MPA; and

(2) Jointly establish, for the MPA, the performance targets that address the performance measures described in 23 CFR part 490 (where applicable), 49 U.S.C. 5326(c) and 49 U.S.C. 5329(d).

(d) The MPO(s) shall review and update the transportation plan at least every 4 years in air quality nonattainment and maintenance areas and at least every 5 years in attainment areas to confirm the transportation plan's validity and consistency with current and forecasted transportation and land use conditions and trends and to extend the forecast period to at least a 20-year planning horizon. In addition, the MPO(s) may revise the transportation plan at any time using the procedures in this section without a requirement to extend the horizon year. The MPO(s) shall approve the transportation plan (and any revisions) and submit it for information purposes to the Governor. Copies of any updated or revised transportation plans must be provided to the FHWA and the FTA.

(e) In metropolitan areas that are in nonattainment for ozone or carbon monoxide, the MPO(s) shall coordinate the development of the metropolitan transportation plan with the process for developing transportation control measures (TCMs) in a State Implementation Plan (SIP).

(f) The MPO(s), the State(s), and the public transportation operator(s) shall validate data used in preparing other existing modal plans for providing input to the transportation plan. In updating the transportation plan, the MPO(s) shall base the update on the latest available estimates and assumptions for population, land use, travel, employment, congestion, and economic activity. The MPO(s) shall approve transportation plan contents and sup-

porting analyses produced by a transportation plan update.

(g) The metropolitan transportation plan shall, at a minimum, include:

(1) The current and projected transportation demand of persons and goods in the metropolitan planning area over the period of the transportation plan;

(2) Existing and proposed transportation facilities (including major roadways, public transportation facilities, intercity bus facilities, multimodal and intermodal facilities, non-motorized transportation facilities (e.g., pedestrian walkways and bicycle facilities), and intermodal connectors) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions over the period of the transportation plan.

(3) A description of the performance measures and performance targets used in assessing the performance of the transportation system in accordance with § 450.306(d).

(4) A system performance report and subsequent updates evaluating the condition and performance of the transportation system with respect to the performance targets described in § 450.306(d), including—

(i) Progress achieved by the metropolitan planning organization in meeting the performance targets in comparison with system performance recorded in previous reports, including baseline data; and

(ii) For metropolitan planning organizations that voluntarily elect to develop multiple scenarios, an analysis of how the preferred scenario has improved the conditions and performance of the transportation system and how changes in local policies and investments have impacted the costs necessary to achieve the identified performance targets.

(5) Operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods;

(6) Consideration of the results of the congestion management process in TMAs that meet the requirements of

this subpart, including the identification of SOV projects that result from a congestion management process in TMAs that are nonattainment for ozone or carbon monoxide.

(7) Assessment of capital investment and other strategies to preserve the existing and projected future metropolitan transportation infrastructure, provide for multimodal capacity increases based on regional priorities and needs, and reduce the vulnerability of the existing transportation infrastructure to natural disasters. The metropolitan transportation plan may consider projects and strategies that address areas or corridors where current or projected congestion threatens the efficient functioning of key elements of the metropolitan area's transportation system.

(8) Transportation and transit enhancement activities, including consideration of the role that intercity buses may play in reducing congestion, pollution, and energy consumption in a cost-effective manner and strategies and investments that preserve and enhance intercity bus systems, including systems that are privately owned and operated, and including transportation alternatives, as defined in 23 U.S.C. 101(a), and associated transit improvements, as described in 49 U.S.C. 5302(a), as appropriate;

(9) Design concept and design scope descriptions of all existing and proposed transportation facilities in sufficient detail, regardless of funding source, in nonattainment and maintenance areas for conformity determinations under the EPA's transportation conformity regulations (40 CFR part 93, subpart A). In all areas (regardless of air quality designation), all proposed improvements shall be described in sufficient detail to develop cost estimates;

(10) A discussion of types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the metropolitan transportation plan. The discussion may focus on policies, programs, or strategies, rather than at the project level. The MPO(s) shall develop the discussion in consultation with applicable

Federal, State, and Tribal land management, wildlife, and regulatory agencies. The MPO(s) may establish reasonable timeframes for performing this consultation;

(11) A financial plan that demonstrates how the adopted transportation plan can be implemented.

(i) For purposes of transportation system operations and maintenance, the financial plan shall contain system-level estimates of costs and revenue sources that are reasonably expected to be available to adequately operate and maintain the Federal-aid highways (as defined by 23 U.S.C. 101(a)(5)) and public transportation (as defined by title 49 U.S.C. Chapter 53).

(ii) For the purpose of developing the metropolitan transportation plan, the MPO(s), public transportation operator(s), and State shall cooperatively develop estimates of funds that will be available to support metropolitan transportation plan implementation, as required under § 450.314(a). All necessary financial resources from public and private sources that are reasonably expected to be made available to carry out the transportation plan shall be identified.

(iii) The financial plan shall include recommendations on any additional financing strategies to fund projects and programs included in the metropolitan transportation plan. In the case of new funding sources, strategies for ensuring their availability shall be identified. The financial plan may include an assessment of the appropriateness of innovative finance techniques (for example, tolling, pricing, bonding, public private partnerships, or other strategies) as revenue sources for projects in the plan.

(iv) In developing the financial plan, the MPO(s) shall take into account all projects and strategies proposed for funding under title 23 U.S.C., title 49 U.S.C. Chapter 53 or with other Federal funds; State assistance; local sources; and private participation. Revenue and cost estimates that support the metropolitan transportation plan must use an inflation rate(s) to reflect "year of expenditure dollars," based on reasonable financial principles and information, developed cooperatively by the

MPO(s), State(s), and public transportation operator(s).

(v) For the outer years of the metropolitan transportation plan (*i.e.*, beyond the first 10 years), the financial plan may reflect aggregate cost ranges/cost bands, as long as the future funding source(s) is reasonably expected to be available to support the projected cost ranges/cost bands.

(vi) For nonattainment and maintenance areas, the financial plan shall address the specific financial strategies required to ensure the implementation of TCMs in the applicable SIP.

(vii) For illustrative purposes, the financial plan may include additional projects that would be included in the adopted transportation plan if additional resources beyond those identified in the financial plan were to become available.

(viii) In cases that the FHWA and the FTA find a metropolitan transportation plan to be fiscally constrained and a revenue source is subsequently removed or substantially reduced (*i.e.*, by legislative or administrative actions), the FHWA and the FTA will not withdraw the original determination of fiscal constraint; however, in such cases, the FHWA and the FTA will not act on an updated or amended metropolitan transportation plan that does not reflect the changed revenue situation.

(12) Pedestrian walkway and bicycle transportation facilities in accordance with 23 U.S.C. 217(g).

(h) The MPO(s) shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of the transportation plan. The consultation shall involve, as appropriate:

(1) Comparison of transportation plans with State conservation plans or maps, if available; or

(2) Comparison of transportation plans to inventories of natural or historic resources, if available.

(i) The metropolitan transportation plan should integrate the priorities, goals, countermeasures, strategies, or projects for the metropolitan planning area contained in the HSIP, including

the SHSP required under 23 U.S.C. 148, the Public Transportation Agency Safety Plan required under 49 U.S.C. 5329(d), or an Interim Agency Safety Plan in accordance with 49 CFR part 659, as in effect until completion of the Public Transportation Agency Safety Plan, and may incorporate or reference applicable emergency relief and disaster preparedness plans and strategies and policies that support homeland security, as appropriate, to safeguard the personal security of all motorized and non-motorized users.

(j) An MPO may, while fitting the needs and complexity of its community, voluntarily elect to develop multiple scenarios for consideration as part of the development of the metropolitan transportation plan.

(1) An MPO that chooses to develop multiple scenarios under this paragraph (i) is encouraged to consider:

(i) Potential regional investment strategies for the planning horizon;

(ii) Assumed distribution of population and employment;

(iii) A scenario that, to the maximum extent practicable, maintains baseline conditions for the performance areas identified in § 450.306(d) and measures established under 23 CFR part 490;

(iv) A scenario that improves the baseline conditions for as many of the performance measures identified in § 450.306(d) as possible;

(v) Revenue constrained scenarios based on the total revenues expected to be available over the forecast period of the plan; and

(vi) Estimated costs and potential revenues available to support each scenario.

(2) In addition to the performance areas identified in 23 U.S.C. 150(c), 49 U.S.C. 5326(c), and 5329(d), and the measures established under 23 CFR part 490, MPOs may evaluate scenarios developed under this paragraph using locally developed measures.

(k) The MPO(s) shall provide individuals, affected public agencies, representatives of public transportation employees, public ports, freight shippers, providers of freight transportation services, private providers of transportation (including intercity bus operators, employer-based commuting programs, such as carpool program,

vanpool program, transit benefit program, parking cashout program, shuttle program, or telework program), representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment on the transportation plan using the participation plan developed under § 450.316(a).

(l) The MPO(s) shall publish or otherwise make readily available the metropolitan transportation plan for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web.

(m) A State or MPO is not required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (f)(11) of this section.

(n) In nonattainment and maintenance areas for transportation-related pollutants, the MPO(s), as well as the FHWA and the FTA, must make a conformity determination on any updated or amended transportation plan in accordance with the Clean Air Act and the EPA transportation conformity regulations (40 CFR part 93, subpart A). A 12-month conformity lapse grace period will be implemented when an area misses an applicable deadline, in accordance with the Clean Air Act and the transportation conformity regulations (40 CFR part 93, subpart A). At the end of this 12-month grace period, the existing conformity determination will lapse. During a conformity lapse, MPOs can prepare an interim metropolitan transportation plan as a basis for advancing projects that are eligible to proceed under a conformity lapse. An interim metropolitan transportation plan consisting of eligible projects from, or consistent with, the most recent conforming transportation plan and TIP may proceed immediately without revisiting the requirements of this section, subject to interagency consultation defined in 40 CFR part 93, subpart A. An interim metropolitan transportation plan containing eligible projects that are not from, or consistent with, the most recent conforming transportation plan and TIP

must meet all the requirements of this section.

[81 FR 34135, May 27, 2016, as amended at 81 FR 93473, Dec. 20, 2016]

§ 450.326 Development and content of the transportation improvement program (TIP).

(a) The MPO, in cooperation with the State(s) and any affected public transportation operator(s), shall develop a TIP for the MPA. If more than one MPO has been designated to serve an MPA, those MPOs within the MPA shall jointly develop a single TIP for the MPA. The TIP shall reflect the investment priorities established in the current metropolitan transportation plan and shall cover a period of no less than 4 years, be updated at least every 4 years, and be approved by the MPO(s) and the Governor(s). However, if the TIP covers more than 4 years, the FHWA and the FTA will consider the projects in the additional years as informational. The MPO(s) may update the TIP more frequently, but the cycle for updating the TIP must be compatible with the STIP development and approval process. The TIP expires when the FHWA/FTA approval of the STIP expires. Copies of any updated or revised TIPs must be provided to the FHWA and the FTA. In nonattainment and maintenance areas subject to transportation conformity requirements, the FHWA and the FTA, as well as the MPO(s), must make a conformity determination on any updated or amended TIP, in accordance with the Clean Air Act requirements and the EPA's transportation conformity regulations (40 CFR part 93, subpart A).

(b) The MPO(s) shall provide all interested parties with a reasonable opportunity to comment on the proposed TIP as required by § 450.316(a). In addition, in nonattainment area TMAs, the MPO(s) shall provide at least one formal public meeting during the TIP development process, which should be addressed through the participation plan described in § 450.316(a). In addition, the MPO(s) shall publish or otherwise make readily available the TIP for public review, including (to the maximum extent practicable) in electronically accessible formats and means,

such as the World Wide Web, as described in § 450.316(a).

(c) The TIP shall be designed such that once implemented, it makes progress toward achieving the performance targets established under § 450.306(d).

(d) The TIP shall include, to the maximum extent practicable, a description of the anticipated effect of the TIP toward achieving the performance targets identified in the metropolitan transportation plan, linking investment priorities to those performance targets.

(e) The TIP shall include capital and non-capital surface transportation projects (or phases of projects) within the boundaries of the metropolitan planning area proposed for funding under 23 U.S.C. and 49 U.S.C. Chapter 53 (including transportation alternatives; associated transit improvements; Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program projects; HSIP projects; trails projects; accessible pedestrian walkways; and bicycle facilities), except the following that may be included:

- (1) Safety projects funded under 23 U.S.C. 402 and 49 U.S.C. 31102;
- (2) Metropolitan planning projects funded under 23 U.S.C. 104(d), and 49 U.S.C. 5305(d);
- (3) State planning and research projects funded under 23 U.S.C. 505 and 49 U.S.C. 5305(e);
- (4) At the discretion of the State and MPO, metropolitan planning projects funded with Surface Transportation Program funds;
- (5) Emergency relief projects (except those involving substantial functional, locational, or capacity changes);
- (6) National planning and research projects funded under 49 U.S.C. 5314; and
- (7) Project management oversight projects funded under 49 U.S.C. 5327.

(f) The TIP shall contain all regionally significant projects requiring an action by the FHWA or the FTA whether or not the projects are to be funded under title 23 U.S.C. Chapters 1 and 2 or title 49 U.S.C. Chapter 53 (e.g., addition of an interchange to the Interstate System with State, local, and/or private funds and congressionally des-

ignated projects not funded under 23 U.S.C. or 49 U.S.C. Chapter 53). For public information and conformity purposes, the TIP shall include all regionally significant projects proposed to be funded with Federal funds other than those administered by the FHWA or the FTA, as well as all regionally significant projects to be funded with non-Federal funds.

(g) The TIP shall include, for each project or phase (e.g., preliminary engineering, environment/NEPA, right-of-way, design, or construction), the following:

- (1) Sufficient descriptive material (*i.e.*, type of work, termini, and length) to identify the project or phase;
- (2) Estimated total project cost, which may extend beyond the 4 years of the TIP;
- (3) The amount of Federal funds proposed to be obligated during each program year for the project or phase (for the first year, this includes the proposed category of Federal funds and source(s) of non-Federal funds. For the second, third, and fourth years, this includes the likely category or possible categories of Federal funds and sources of non-Federal funds);
- (4) Identification of the agencies responsible for carrying out the project or phase;
- (5) In nonattainment and maintenance areas, identification of those projects that are identified as TCMs in the applicable SIP;
- (6) In nonattainment and maintenance areas, included projects shall be specified in sufficient detail (design concept and scope) for air quality analysis in accordance with the EPA transportation conformity regulations (40 CFR part 93, subpart A); and
- (7) In areas with Americans with Disabilities Act required paratransit and key station plans, identification of those projects that will implement these plans.

(h) Projects that are not considered to be of appropriate scale for individual identification in a given program year may be grouped by function, work type, and/or geographic area using the applicable classifications under 23 CFR 771.117(c) and (d) and/or 40 CFR part 93. In nonattainment and maintenance areas, project classifications must be

consistent with the “exempt project” classifications contained in the EPA transportation conformity regulations (40 CFR part 93, subpart A). In addition, projects proposed for funding under title 23 U.S.C. Chapter 2 that are not regionally significant may be grouped in one line item or identified individually in the TIP.

(i) Each project or project phase included in the TIP shall be consistent with the approved metropolitan transportation plan.

(j) The TIP shall include a financial plan that demonstrates how the approved TIP can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the TIP, and recommends any additional financing strategies for needed projects and programs. In developing the TIP, the MPO(s), State(s), and public transportation operator(s) shall cooperatively develop estimates of funds that are reasonably expected to be available to support TIP implementation in accordance with § 450.314(a). Only projects for which construction or operating funds can reasonably be expected to be available may be included. In the case of new funding sources, strategies for ensuring their availability shall be identified. In developing the financial plan, the MPO(s) shall take into account all projects and strategies funded under title 23 U.S.C., title 49 U.S.C. Chapter 53, and other Federal funds; and regionally significant projects that are not federally funded. For purposes of transportation operations and maintenance, the financial plan shall contain system-level estimates of costs and revenue sources that are reasonably expected to be available to adequately operate and maintain Federal-aid highways (as defined by 23 U.S.C. 101(a)(6)) and public transportation (as defined by title 49 U.S.C. Chapter 53). In addition, for illustrative purposes, the financial plan may include additional projects that would be included in the TIP if reasonable additional resources beyond those identified in the financial plan were to become available. Revenue and cost estimates for the TIP must use an inflation rate(s) to reflect “year of expenditure dollars,” based on reasonable financial principles and in-

formation, developed cooperatively by the MPO(s), State(s), and public transportation operator(s).

(k) The TIP shall include a project, or a phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project. In nonattainment and maintenance areas, projects included in the first 2 years of the TIP shall be limited to those for which funds are available or committed. For the TIP, financial constraint shall be demonstrated and maintained by year and shall include sufficient financial information to demonstrate which projects are to be implemented using current and/or reasonably available revenues, while federally supported facilities are being adequately operated and maintained. In the case of proposed funding sources, strategies for ensuring their availability shall be identified in the financial plan consistent with paragraph (h) of this section. In nonattainment and maintenance areas, the TIP shall give priority to eligible TCMs identified in the approved SIP in accordance with the EPA transportation conformity regulations (40 CFR part 93, subpart A) and shall provide for their timely implementation.

(l) In cases that the FHWA and the FTA find a TIP to be fiscally constrained and a revenue source is subsequently removed or substantially reduced (*i.e.*, by legislative or administrative actions), the FHWA and the FTA will not withdraw the original determination of fiscal constraint. However, in such cases, the FHWA and the FTA will not act on an updated or amended TIP that does not reflect the changed revenue situation.

(m) Procedures or agreements that distribute suballocated Surface Transportation Program funds to individual jurisdictions or modes within the MPA by pre-determined percentages or formulas are inconsistent with the legislative provisions that require the MPO, in cooperation with the State and the public transportation operator, to develop a prioritized and financially constrained TIP and shall not be used unless they can be clearly shown to be based on considerations required to be

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addressed as part of the metropolitan transportation planning process.

(n) As a management tool for monitoring progress in implementing the transportation plan, the TIP should:

(1) Identify the criteria and process for prioritizing implementation of transportation plan elements (including multimodal trade-offs) for inclusion in the TIP and any changes in priorities from previous TIPs;

(2) List major projects from the previous TIP that were implemented and identify any significant delays in the planned implementation of major projects; and

(3) In nonattainment and maintenance areas, describe the progress in implementing any required TCMs, in accordance with 40 CFR part 93.

(o) In metropolitan nonattainment and maintenance areas, a 12-month conformity lapse grace period will be implemented when an area misses an applicable deadline, according to the Clean Air Act and the transportation conformity regulations (40 CFR part 93, subpart A). At the end of this 12-month grace period, the existing conformity determination will lapse. During a conformity lapse, MPOs may prepare an interim TIP as a basis for advancing projects that are eligible to proceed under a conformity lapse. An interim TIP consisting of eligible projects from, or consistent with, the most recent conforming metropolitan transportation plan and TIP may proceed immediately without revisiting the requirements of this section, subject to interagency consultation defined in 40 CFR part 93. An interim TIP containing eligible projects that are not from, or consistent with, the most recent conforming transportation plan and TIP must meet all the requirements of this section.

(p) Projects in any of the first 4 years of the TIP may be advanced in place of another project in the first 4 years of the TIP, subject to the project selection requirements of § 450.332. In addition, the MPO(s) may revise the TIP at any time under procedures agreed to by the State, MPO(s), and public transportation operator(s) consistent with the TIP development procedures established in this section, as well as the procedures for the MPO(s) participa-

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tion plan (see § 450.316(a)) and FHWA/FTA actions on the TIP (see § 450.330).

[81 FR 34135, May 27, 2016, as amended at 81 FR 93473, Dec. 20, 2016]

§ 450.328 TIP revisions and relationship to the STIP.

(a) An MPO(s) may revise the TIP at any time under procedures agreed to by the cooperating parties consistent with the procedures established in this part for its development and approval. In nonattainment or maintenance areas for transportation-related pollutants, if a TIP amendment involves non-exempt projects (per 40 CFR part 93), or is replaced with an updated TIP, the MPO(s) and the FHWA and the FTA must make a new conformity determination. In all areas, changes that affect fiscal constraint must take place by amendment of the TIP. The MPO(s) shall use public participation procedures consistent with § 450.316(a) in revising the TIP, except that these procedures are not required for administrative modifications.

(b) After approval by the MPO(s) and the Governor, the State shall include the TIP without change, directly or by reference, in the STIP required under 23 U.S.C. 135. In nonattainment and maintenance areas, the FHWA and the FTA must make a conformity finding on the TIP before it is included in the STIP. A copy of the approved TIP shall be provided to the FHWA and the FTA.

(c) The State shall notify the MPO(s) and Federal land management agencies when it has included a TIP including projects under the jurisdiction of these agencies in the STIP.

[81 FR 34135, May 27, 2016, as amended at 81 FR 93473, Dec. 20, 2016]

§ 450.330 TIP action by the FHWA and the FTA.

(a) The FHWA and the FTA shall jointly find that each metropolitan TIP is consistent with the metropolitan transportation plan produced by the continuing and comprehensive transportation process carried on cooperatively by the MPO(s), the State(s), and the public transportation operator(s) in accordance with 23 U.S.C. 134 and 49 U.S.C. 5303. This finding shall be based on the self-certification statement submitted by the State and

MPO(s) under § 450.336, a review of the metropolitan transportation plan by the FHWA and the FTA, and upon other reviews as deemed necessary by the FHWA and the FTA.

(b) In nonattainment and maintenance areas, the MPO, as well as the FHWA and the FTA, shall determine conformity of any updated or amended TIP, in accordance with 40 CFR part 93. After the FHWA and the FTA issue a conformity determination on the TIP, the TIP shall be incorporated, without change, into the STIP, directly or by reference.

(c) If an MPO(s) has not updated the metropolitan transportation plan in accordance with the cycles defined in § 450.324(c), projects may only be advanced from a TIP that was approved and found to conform (in nonattainment and maintenance areas) prior to expiration of the metropolitan transportation plan and meets the TIP update requirements of § 450.326(a). Until the MPO(s) approves (in attainment areas) or the FHWA and the FTA issue a conformity determination on (in nonattainment and maintenance areas) the updated metropolitan transportation plan, the MPO(s) may not amend the TIP.

(d) In the case of extenuating circumstances, the FHWA and the FTA will consider and take appropriate action on requests to extend the STIP approval period for all or part of the TIP in accordance with § 450.220(b).

(e) If an illustrative project is included in the TIP, no Federal action may be taken on that project by the FHWA and the FTA until it is formally included in the financially constrained and conforming metropolitan transportation plan and TIP.

(f) Where necessary in order to maintain or establish operations, the FHWA and the FTA may approve highway and transit operating assistance for specific projects or programs, even though the projects or programs may not be included in an approved TIP.

[81 FR 34135, May 27, 2016, as amended at 81 FR 93473, Dec. 20, 2016]

§ 450.332 Project selection from the TIP.

(a) Once a TIP that meets the requirements of 23 U.S.C. 134(j), 49 U.S.C.

5303(j), and § 450.326 has been developed and approved, the first year of the TIP will constitute an “agreed to” list of projects for project selection purposes and no further project selection action is required for the implementing agency to proceed with projects, except where the appropriated Federal funds available to the metropolitan planning area are significantly less than the authorized amounts or where there are significant shifting of projects between years. In this case, the MPO, the State, and the public transportation operator(s) if requested by the MPO, the State, or the public transportation operator(s) shall jointly develop a revised “agreed to” list of projects. If the State or public transportation operator(s) wishes to proceed with a project in the second, third, or fourth year of the TIP, the specific project selection procedures stated in paragraphs (b) and (c) of this section must be used unless the MPO, the State, and the public transportation operator(s) jointly develop expedited project selection procedures to provide for the advancement of projects from the second, third, or fourth years of the TIP.

(b) In metropolitan areas not designated as TMAs, the State and/or the public transportation operator(s), in cooperation with the MPO(s) shall select projects to be implemented using title 23 U.S.C. funds (other than Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program projects) or funds under title 49 U.S.C. Chapter 53, from the approved metropolitan TIP. Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program projects shall be selected in accordance with procedures developed pursuant to 23 U.S.C. 201, 202, 203, and 204.

(c) In areas designated as TMAs, the MPO(s) shall select all 23 U.S.C. and 49 U.S.C. Chapter 53 funded projects (excluding projects on the NHS and Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program) in consultation with the State and public transportation operator(s) from the approved TIP and in accordance with the priorities in the approved TIP. The

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State shall select projects on the NHS in cooperation with the MPO(s), from the approved TIP. Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program projects shall be selected in accordance with procedures developed pursuant to 23 U.S.C. 201, 202, 203, and 204.

(d) Except as provided in § 450.326(e) and § 450.330(f), projects not included in the federally approved STIP are not eligible for funding with funds under title 23 U.S.C. or 49 U.S.C. Chapter 53.

(e) In nonattainment and maintenance areas, priority shall be given to the timely implementation of TCMs contained in the applicable SIP in accordance with the EPA transportation conformity regulations (40 CFR part 93, subpart A).

[81 FR 34135, May 27, 2016, as amended at 81 FR 93473, Dec. 20, 2016]

§ 450.334 Annual listing of obligated projects.

(a) In metropolitan planning areas, on an annual basis, no later than 90 calendar days following the end of the program year, the State, public transportation operator(s), and the MPO(s) shall cooperatively develop a listing of projects (including investments in pedestrian walkways and bicycle transportation facilities) for which funds under 23 U.S.C. or 49 U.S.C. Chapter 53 were obligated in the preceding program year.

(b) The listing shall be prepared in accordance with § 450.314(a) and shall include all federally funded projects authorized or revised to increase obligations in the preceding program year, and shall at a minimum include the TIP information under § 450.326(g)(1) and (4) and identify, for each project, the amount of Federal funds requested in the TIP, the Federal funding that was obligated during the preceding year, and the Federal funding remaining and available for subsequent years.

(c) The listing shall be published or otherwise made available in accordance with the MPO(s) public participation criteria for the TIP.

[81 FR 34135, May 27, 2016, as amended at 81 FR 93473, Dec. 20, 2016]

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§ 450.336 Self-certifications and Federal certifications.

(a) For all MPAs, concurrent with the submittal of the entire proposed TIP to the FHWA and the FTA as part of the STIP approval, the State and the MPO shall certify at least every 4 years that the metropolitan transportation planning process is being carried out in accordance with all applicable requirements including:

(1) 23 U.S.C. 134, 49 U.S.C. 5303, and this subpart;

(2) In nonattainment and maintenance areas, sections 174 and 176(c) and (d) of the Clean Air Act, as amended (42 U.S.C. 7504, 7506(c) and (d)) and 40 CFR part 93;

(3) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d–1) and 49 CFR part 21;

(4) 49 U.S.C. 5332, prohibiting discrimination on the basis of race, color, creed, national origin, sex, or age in employment or business opportunity;

(5) Section 1101(b) of the FAST Act (Pub. L. 114–357) and 49 CFR part 26 regarding the involvement of disadvantaged business enterprises in DOT funded projects;

(6) 23 CFR part 230, regarding the implementation of an equal employment opportunity program on Federal and Federal-aid highway construction contracts;

(7) The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) and 49 CFR parts 27, 37, and 38;

(8) The Older Americans Act, as amended (42 U.S.C. 6101), prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;

(9) Section 324 of title 23 U.S.C. regarding the prohibition of discrimination based on gender; and

(10) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and 49 CFR part 27 regarding discrimination against individuals with disabilities.

(b) In TMAs, the FHWA and the FTA jointly shall review and evaluate the transportation planning process for each TMA no less than once every 4 years to determine if the process meets the requirements of applicable provisions of Federal law and this subpart.

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(1) After review and evaluation of the TMA planning process, the FHWA and FTA shall take one of the following actions:

(i) If the process meets the requirements of this part and the MPO(s) and the Governor have approved a TIP, jointly certify the transportation planning process;

(ii) If the process substantially meets the requirements of this part and the MPO(s) and the Governor have approved a TIP, jointly certify the transportation planning process subject to certain specified corrective actions being taken; or

(iii) If the process does not meet the requirements of this part, jointly certify the planning process as the basis for approval of only those categories of programs or projects that the FHWA and the FTA jointly determine, subject to certain specified corrective actions being taken.

(2) If, upon the review and evaluation conducted under paragraph (b)(1)(iii) of this section, the FHWA and the FTA do not certify the transportation planning process in a TMA, the Secretary may withhold up to 20 percent of the funds attributable to the metropolitan planning area of the MPO(s) for projects funded under title 23 U.S.C. and title 49 U.S.C. Chapter 53 in addition to corrective actions and funding restrictions. The withheld funds shall be restored to the MPA when the metropolitan transportation planning process is certified by the FHWA and FTA, unless the funds have lapsed.

(3) A certification of the TMA planning process will remain in effect for 4 years unless a new certification determination is made sooner by the FHWA and the FTA or a shorter term is specified in the certification report.

(4) In conducting a certification review, the FHWA and the FTA shall provide opportunities for public involvement within the metropolitan planning area under review. The FHWA and the FTA shall consider the public input received in arriving at a decision on a certification action.

(5) The FHWA and the FTA shall notify the MPO(s), the State(s), and public transportation operator(s) of the actions taken under paragraphs (b)(1) and (b)(2) of this section. The FHWA and

the FTA will update the certification status of the TMA when evidence of satisfactory completion of a corrective action(s) is provided to the FHWA and the FTA.

[81 FR 34135, May 27, 2016, as amended at 81 FR 93473, Dec. 20, 2016]

§ 450.338 Applicability of NEPA to metropolitan transportation plans and programs.

Any decision by the Secretary concerning a metropolitan transportation plan or TIP developed through the processes provided for in 23 U.S.C. 134, 49 U.S.C. 5303, and this subpart shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

§ 450.340 Phase-in of new requirements.

(a) Prior to May 27, 2018, an MPO or MPOs may adopt a metropolitan transportation plan that has been developed using the SAFETEA-LU requirements or the provisions and requirements of this part. On or after May 27, 2018, an MPO or MPOs may not adopt a metropolitan transportation plan that has not been developed according to the provisions and requirements of this part.

(b) Prior to May 27, 2018 (2 years after the publication date of this rule), FHWA/FTA may determine the conformity of, or approve as part of a STIP, a TIP that has been developed using SAFETEA-LU requirements or the provisions and requirements of this part. On or after May 27, 2018 (2 years after the publication date of this rule), FHWA/FTA may only determine the conformity of, or approve as part of a STIP, a TIP that has been developed according to the provisions and requirements of this part, regardless of when the MPO developed the TIP.

(c) On and after May 27, 2018 (2 years after the issuance date of this rule), the FHWA and the FTA will take action (*i.e.*, conformity determinations and STIP approvals) on an updated or amended TIP developed under the provisions of this part, even if the MPO

has not yet adopted a new metropolitan transportation plan under the provisions of this part, as long as the underlying transportation planning process is consistent with the requirements in the MAP-21.

(d) On or after May 27, 2018 (2 years after the publication date of this rule), an MPO may make an administrative modification to a TIP that conforms to either the SAFETEA-LU or to the provisions and requirements of this part.

(e) Two years from the effective date of each rule establishing performance measures under 23 U.S.C. 150(c), 49 U.S.C. 5326, and 49 U.S.C. 5329 FHWA/FTA will only determine the conformity of, or approve as part of a STIP, a TIP that is based on a metropolitan transportation planning process that meets the performance based planning requirements in this part and in such a rule.

(f) Prior to 2 years from the effective date of each rule establishing performance measures under 23 U.S.C. 150(c), 49 U.S.C. 5326, or 49 U.S.C. 5329, an MPO may adopt a metropolitan transportation plan that has been developed using the SAFETEA-LU requirements or the performance-based planning requirements of this part and in such a rule. Two years on or after the effective date of each rule establishing performance measures under 23 U.S.C. 150(c), 49 U.S.C. 5326, or 49 U.S.C. 5329, an MPO may only adopt a metropolitan transportation plan that has been developed according to the performance-based provisions and requirements of this part and in such a rule.

(g) A newly designated TMA shall implement the congestion management process described in § 450.322 within 18 months of designation.

(h) With respect to requirements added in §§ 450.306(d)(5); 450.310(e); 450.312(a), (h), (i), and (j); 450.314(e), (f), (g), and (h); 450.324(c), (d), (e), (f), (h), (k), (l), and (n); 450.326; 450.330; 450.332(c); 450.334(a); and 450.336(b) on January 19, 2017: States and MPOs shall comply with the MPA boundary and MPO boundaries agreement provisions, shall document the determination of the Governor and MPO(s) whether the size and complexity of the MPA make multiple MPOs appropriate, and the MPOs shall comply with the require-

ments for jointly established performance targets, and a single metropolitan transportation plan and TIP for the entire MPA, prior to the next metropolitan transportation plan update occurring on or after the date that is 2 years after the date the U.S. Census Bureau releases its notice of Qualifying Urban Areas following the 2020 census.

[81 FR 34135, May 27, 2016, as amended at 81 FR 93473, Dec. 20, 2016]

APPENDIX A TO PART 450—LINKING THE TRANSPORTATION PLANNING AND NEPA PROCESSES

BACKGROUND AND OVERVIEW

This Appendix provides additional information to explain the linkage between the transportation planning and project development/National Environmental Policy Act (NEPA) processes. It is intended to be non-binding and should not be construed as a rule of general applicability.

For 40 years, the Congress has directed that federally funded highway and transit projects must flow from metropolitan and statewide transportation planning processes (pursuant to 23 U.S.C. 134–135 and 49 U.S.C. 5303–5306). Over the years, the Congress has refined and strengthened the transportation planning process as the foundation for project decisions, emphasizing public involvement, consideration of environmental and other factors, and a Federal role that oversees the transportation planning process but does not second-guess the content of transportation plans and programs.

Despite this statutory emphasis on transportation planning, the environmental analyses produced to meet the requirements of the NEPA of 1969 (42 U.S.C. 4231 *et seq.*) have often been conducted *de novo*, disconnected from the analyses used to develop long-range transportation plans, statewide and metropolitan Transportation Improvement Programs (STIPs/TIPs), or planning-level corridor/subarea/feasibility studies. When the NEPA and transportation planning processes are not well coordinated, the NEPA process may lead to the development of information that is more appropriately developed in the planning process, resulting in duplication of work and delays in transportation improvements.

The purpose of this Appendix is to change this culture, by supporting congressional intent that statewide and metropolitan transportation planning should be the foundation for highway and transit project decisions. This Appendix was crafted to recognize that transportation planning processes vary across the country. This document provides details on how information, analysis, and